BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Revision of the Commission's Rules to	)	**CC Docket No. 94-102**
Ensure Compatibility With Enhanced	)	RM-8143
Enhanced 911 Emergency Calling System	)	

REPLY COMMENTS OF THE INDEPENDENT CELLULAR SERVICES ASSOCIATION AND CELLTEK & MT COMMUNICATIONS

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The Independent Cellular Services Association ("ICSA"), CellTek and MT Communications hereby submits its Reply Comments to those Opposition Comments from Wireless Consumers Alliance("WCA"), Global Wireless Consumers Alliance ("GWCA") and the Cellular Telecommunications Industry Association("CTIA") to its Petition for Reconsideration in the above captioned proceeding[1]. ICSA represents a group of small companies that sell and service cellular telephones. Completion of E911 calls are of critical importance to ICSA members because they are concerned about the safety of their customers, friends and family members to whom they have supplied cellular telephones. As WCA & GWCA stated in their comments, ICSA members "have valuable first hand knowledge concerning the needs and requirement of wireless consumers". ICSA was the only group that made suggestions to improve call rates to E911 for the 100 million phones that the public will own by the time the new rule takes effect. ICSA believes that these ideas should have been considered and adopted in *FCC 99-96.*

[1] In the Matter of Revision of the Commissions' Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems. CC Docket No. 94-102, Second Report and Order, FCC 99-96.

I. INTRODUCTION AND SUMMARY.

The E911 Second Report and Order contained some important and startling conclusions that as many as 1/3 of all E911 calls will not reach an emergency center because their call can originate from a low power handheld that is positioned in one the tens of thousands of holes or dead spots in the US cellular system. By the time the new rule goes into effect next year there will be about 100 million phones analog phones in the US without one of the three new technologies. If CTIA and Ericsson win their reconsideration request for a delay in implementation, there could be an additional 20 million phones added to the current inventory. The Commission recognized in *the Second Report and Order* that steps taken "are in some ways, small ones" [2]. ICSA agrees and believes that there were a number of proposals it made that were overlooked which could saves lives of the owners of the huge inventory of existing phones.

The two consumer groups, WCA and GWCA, submitted favorable comments to ICSA's petition. There was one exception - the proposal that the FCC should require wireless carriers to publish measured or modeled coverage maps for both low power handhelds and the high powered mobile phones so consumer can chose the best service provider. They supported our overall objective in this issue but are pursing "truth in coverage" via class action lawsuits using consumer protection laws. We respectfully disagree and believe that only action by the Commission will force publication of such maps throughout the country in a timely fashion. In the areas of informing the public about which of the three call completion technologies are employed in various phones and how to use the feature, WCA and GWCA agrees with ICSA that this information will

[2] See *FCC Second Report and Order* at 89, Page 34.

promote public understanding of the safety features as passed by the Commission. WCA and GWCA support the use of extension phones to permit consumers to have a portable phone and a powerful car phone on the same telephone number with a single bill. This will significantly increase the probability of 911 call completion and they urge the Commission to move forward on Docket 92-115 which is also under reconsideration.

CTIA in their comments chose to disagree with ICSA's petition largely over procedural and legal issues rather than the merits of the arguments that ICSA put forward to promote public safety. This fact did not come as a surprise to ICSA since CTIA has a history of opposition of virtually all rule changes that come from outside their membership. It is true that ICSA entered the Docket 94-102 rule making part way through the process but did so after seeing that many of the issues it had raised in Docket 92-115 were similar, relevant and dated back to 1995. Once up to speed, ICSA has make timely filing in September and October 1998 which were up to a full nine months before the May 1999 Order. ICSA also made numerous Ex Parte presentations to members of the Commission to make its views known. The consumer education items raised in ICSA's Petition for Reconsideration are secondary issues that the Commission could have placed in the comments section of the Second Report and Order as were done with other items. For example, both ICSA and WCA furnished maps to the Commission showing that .6 watt portables and 3 watt car phones have major coverage differences. There are dead spots in the coverage patterns of all carriers particularly in the case of a portable. We believe that the Commission had the authority to require carriers in this rule making to publish maps showing their true coverage areas so consumer can make informed decisions. Because the Commission chose the market

driven approach of permitting three different technologies, it a logical extension to require the manufacturers and carriers to document to the public which technology is being sold so that consumers can make intelligent choice of phones and is within the purview of this rule making.

ICSA has had pending before the Commission for 5 years a petition under Docket 92-115 to permit extension phones. This was made clear in all of its filings at the FCC under Docket 94-102 - there was no "cloak" as claimed by CTIA. Since the *E911 Second NPRM* was intended to improve analog call completion for E911, ICSA presented the only idea that would work with the 100 million existing phone inventory. ICSA believes the Commission could have adopted the extension phone approach under Docket 94-102 or acted on the 5 year old pending petition under Docket 92-115.

CTIA states in its comments "ICSA's Proposal for Expansion[sic] Phone Technology is Illegal Under The U.S. Criminal Code"[3] which is untrue. As will be explained later in more detail, the law they had passed in the guise of preventing cloning fraud only deals with the possession of cloning software or hardware by certain a certain class of people. Attachment 1 is the new law. There were a number of amendments made to the legislation to permit "employees, or agents of , or a person engaged in business with, a facilities-based carrier"(class) to possess the tools. For example, Motorola or Ericsson obviously posses the programming tools to put the same ESN into any of their phones as part of the manufacturing and service process. If the Commission permitted two or more phones to have the same ESN under part 22.919 then ICSA or any other legitimate business such as Motorola could sell extension phones by having one of

[3] Title to Paragraph B on Page 7 of CTIA's Comments

the people in the class established by the law do the programming. Some members of ICSA are cellular agents of a carrier and would be permitted by the new law to posses the programming tools. The FCC's role in the extension phone legal issue is that under 22.919 they set the technical standards for type acceptance which gives authority to the carriers to permit changing of the telephone serial number. With today's FCC rules in Part 22.919, any cellular agent or employee who was found by the carrier to be creating extension phones would be fired or have his agent agreement terminated and then he would be in violation of the new law. In a(9) of the law "without authorization" is used. The Commission has the authority to revise its rules to grant authority under controlled circumstances as ICSA has proposed. ICSA is not requesting the Commission to overturn the statute because it agrees with CTIA that the Commission is powerless to do so plus it is not necessary. What is need is for the Commission to change 22.919 to permit extension phones by permitting the same customer to own two cellular phones with the same ESN. We have provided the Commission in Docket 92-115 all of the technical language and restrictions to implement extension phones and our request.

During the passage of "Cellular Protection Act", Congressmen Morella, McCollum and Leahy stated that the FCC should act on the extension phone issue without any influence from the law since it directed against the illegal cloners and not against the extension phone firms. Actual quotes from both floors are contains in Attachment 5 of our petition[4]

CTIA's solution to the extension phone problem is for consumers to install 3 watt unsubscribed phone in their vehicles. Ironically, CTIA has opposed throughout previous

[4] Reference is in our Petition for Reconsideration on Page 18.

Docket 94-102 proceeding this very issue. They properly pointed out that under Phase 1, a PSAP cannot call back a party reporting an emergency if the phone does not have a valid number/MIN. In addition to this fact that there is false identification data sent because it is likely that some other subscriber has the MIN of the unsubscribed phone and wrong name will pop up at the PSAP. ICSA members have attempted to test market the CTIA approach and stated in its petition that the public is unwilling to pay for a mobile phone that can only make 911 calls. By the same token 100's of thousands have purchase extension phones.

In summary, according to tests conducted by WCA, had Ms. Speilholtz or the Lechuga family had a three watt extension phone in their vehicles they would have been able to reach an emergency center and have been rescued. During the next three to five years that it takes to replace perhaps half of the existing inventory of phones, there will be increased injuries and deaths unless ideas such as those presented by ICSA are adopted. ICSA believes the Commission should reconsider its Second Report and Order and adopt ICSA's proposals for further improving E911 calling.

II. ADDITIONAL REPLY COMMENTS TO WCA'S AND GWCA'S FILING.

WCA and GWCA presented some new alarming data that one of the PCS carriers is using a portable phone that only transmit .2 watts instead of the .6 watt transmitter in most portable phones. This makes the need for Commission approval of such requests as the use of higher power extension phones to be of greater importance.

Both groups also believe that it is important to know which of the three technologies is employed in each phone so that empirical data can be developed on which algorithm works best to be employed in future rule making.

III. ADDITIONAL REPLY COMMENTS TO CTIA's FILING

CTIA has attempted again to confuse the Commission about cellular extension phones. First they use the term cloned phones despite our careful definitions in our petition. On their web site they have a section termed "emulation or extension" where they use the proper definitions. As discussed earlier, they try to falsely like the new law to the FCC Rule 22.919. This is a continuation of the type of rhetoric of has been use to try to confused the Commission over the last 5 years.

Listed below are a number of points contained in our petition that CTIA did not chose to comment on. One can therefore conclude they took no issue with ICSA points:

1. Cellular extension phones are needed to allow consumers to have an extension phone in their vehicle connected to a GPS receiver and to an airbag notification system particularly in rural areas where most deaths occur. To also enjoy the benefits of a portable phone, the consumer has to pay on the average an $20 per month for the vehicle which will prevent this technology from being deployed except for the very wealthy.
2. CTIA did not comment on our analogy to the Carterphone/Hush-a-Phone cases.
3. CTIA did not comment on our definition[5] of an extension phone versus that of a clone phone except as previously noted. They believe it benefits them before the FCC to refer extension phones emulated as clones.
4. CTIA has never commented in any filing that many of the phones made by Motorola and Ericsson are in violation of the new ESN rule which we are trying to have

[5] Paragraph 1 on Page 10 of our Petition.

modified. This fact is on the record at the Commission[6] based on a demonstration at the OET last year. These phones should have their type acceptance withdrawn. Had cellular telephone been built properly cloning could take place and there would have been no need for the new law to ban programming equipment.

5. CTIA did not refute our witness Dr. Levine who has testified and has provided many written reports to the Commission that extension phone will not cause harm to the network and is compatible with the fraud detection systems.
6. CTIA did not refute the health and safety points that we made regarding the use of mobile extension phones versus the use of handhelds while driving.
7. CTIA did not take issue with our statement that 1 in 4 consumers would purchase an extension phone thereby saving 20 million telephone numbers and solving a major FCC problem!
8. ICSA pointed out that there are probably 100's of thousands existing extension phone users that had their phones reprogrammed before CTIA took all of its legal actions. Our point is that these customers bought them are happy with their function.
9. Finally CTIA did not comment on the fact that true cloning was issued a death certificate by them in 1998 in one of their conferences.

IV. ICSA OPPOSES THE SCHEDULE SLIP REQUEST BY CTIA IN 22.921

ICSA did not file opposition comments against Ericsson's request for a schedule slip for two reasons. It seems unlikely that it would be approved by the Commission because they were only one of dozens of possible manufacturers that could have filed. Also, ICSA first reported in these proceedings that Ericsson had what we thought was

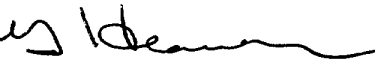
[6] Paragraph 3 on Page 13 of and Paragraph 5 on Page 14 of our Petition.

strongest signal already in the phone. They wrote the Commission and stated they had a similar algorithm but it is not strongest signal but performed a similar function. CTIA used the opposition to our petition to request a slip by the entire industry. As they stated, product life can be 18 months and if the large manufacturers put their new models in for type acceptance in just before the February 2000 deadline, then would be an additional 20 to 30 million more phones without the new life saving algorithm. We oppose this and believe this would totally defeat the goals of the Commission and the various Consumer groups.

V. CONCLUSION

ICSA believes the *Report and Order 99-96* was good first step. However, the Commission, with dual responsibility of being a regulator and a consumer protection agency for wireless devices, needs to act positively on ICSA's petitions. Our proposal will dramatically increases public safety for those consumer who think they are buying a product that will save their lives in case of an emergency. We respectfully request approval of ICSA's petitions.

Respectfully submitted,



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September 15, 1999

CERTIFICATE OF SERVICE

I, M. G. Heavener, hereby certify that on this 15 day of September, 1999 that copies of the foregoing Reply Comments of ICSA, CellTek, and MT Communications regarding its Petition for Reconsideration in CC Docket 94-102 have been mailed to the following parties who filed Comments:

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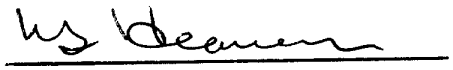

ATTACHMENT 1

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 47. FRAUD AND FALSE STATEMENTS
18 USCS § 1029 (1999)

§ 1029. Fraud and related activity in connection with access devices

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devises during any one-year period, and by such conduct obtains anything of value aggregating $1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices;

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

(5) knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than $1,000;

(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

(A) offering an access device; or

(B) selling information regarding or an application to obtain an access device;

(7) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services;

(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

(a)

(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or

(10) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, 1 or more evidences or records of transactions made by an access device;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(b) (1) Whoever attempts to commit an offense under subsection (a) of this section shall be subject to the same penalties as those prescribed for the offense attempted.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) Penalties.

(1) Generally. The punishment for an offense under subsection (a) of this section is--

(A) in the case of an offense that does not occur after a conviction for another offense under this section--

(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

(ii) if the offense is under paragraph (4), (5), (8), or (9), of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

(2) Forfeiture procedure. The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act [*21 USCS § 853*], except for subsection (d) of that section.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section--

(1) the term "access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term "unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) the term "produce" includes design, alter, authenticate, duplicate, or assemble;

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of;

(6) the term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

(7) the term "credit card system member" means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system;

(8) the term "scanning receiver" means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119 [*18 USCS §§ 2510* et seq.] or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument[;]

(9) the term "telecommunications service" has the meaning given such term in section 3 of title I of the Communications Act of 1934 *(47 U.S.C. 153);*

(10) the term "facilities-based carrier" means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934 [*47 USCS §§ 301* et seq.]; and

(11) the term "telecommunication identifying information" means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title. For purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(g) (1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for the purpose of protecting the property or legal rights of that carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.